

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION**

MDL No. 2419

Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Cases Against the Saint Thomas Defendants

**PLAINTIFFS’ STEERING COMMITTEE’S MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING COMPARATIVE FAULT DEFENSES ATTRIBUTING
FAULT TO GOVERNMENTAL ENTITIES**

The Plaintiffs' Steering Committee respectfully moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for entry of partial summary judgment dismissing the Saint Thomas Defendants' ¹ affirmative defenses attempting to attribute fault at trial to certain government entities, including the Food and Drug Administration, Massachusetts Board of Registration in Pharmacy, the Tennessee Board of Pharmacy, and the Tennessee Department of Health. As grounds for this motion, the PSC states that, under Tennessee law, fault cannot be attributed to the above mentioned government agencies because none of those agencies owed an individual legal duty to any particular plaintiff. Under Tennessee's public duty doctrine, the only legal duty owed by said governmental entities was owed to the general public, not to any particular individual. Accordingly, because legal duty is an essential element of fault under Tennessee law, plaintiffs are entitled to partial summary judgment establishing that fault cannot be allocated to governmental entities at trial.

¹ The Saint Thomas Defendants include the following entities and individuals: the Saint Thomas Outpatient Neurosurgical Center, LLC, Howell Allen Clinic, A Professional Corporation, John Culclasure, MD, Debra V. Schamberg, RN, Vaughn Allen, MD, Saint Thomas West Hospital f/k/a Saint Thomas Hospital, Saint Thomas Network, and Saint Thomas Health.

Additionally, the Saint Thomas Defendants have failed to put forth any evidence that the Tennessee Board of Pharmacy and/or the Tennessee Department of Health caused plaintiffs' injuries (even assuming they had a duty to prevent them).

As grounds for this motion, the Plaintiffs' Steering Committee relies upon the contemporaneously filed Memorandum of Law and Statement of Undisputed Material Facts.

Respectfully Submitted This 9th Day of May, 2016,

/s/ J. Gerard Stranch, IV

J. Gerard Stranch, IV
Benjamin A. Gastel
BRANSTETTER, STRANCH &
JENNINGS, PLLC
227 Second Avenue North
Nashville, TN 37201
Telephone: 615/254-8801
Facsimile: 615/255-5419
gerards@branstetterlaw.com

Plaintiffs' Steering Committee and Tennessee State Chair

Thomas M. Sobol
Kristen Johnson Parker
HAGENS BERMAN SOBOL SHAPIRO, LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: 617/482-3700
Facsimile: 617/482-3003
tom@hbsslaw.com
kristenjp@hbsslaw.com

Plaintiffs' Lead Counsel

Elizabeth J. Cabraser
Mark P. Chalos
LIEFF CABRASER, HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: 415/956-1000
Facsimile: 415/956-1008

ecabraser@lchb.com
mchalos@lchb.com

Federal/State Liaison

Marc E. Lipton
LIPTON LAW
18930 W. 10 Mile Road
Southfield, MI 48075
Telephone: 248/557-1688
Facsimile: 248/557-6344
marc@liptonlaw.com

Kimberly A. Dougherty
JANET, JENNER & SUGGS, LLC
31 St. James Avenue, Suite 365
Boston, MA 02116
Telephone: 617/933-1265
kdougherty@myadvocates.com

Mark Zamora
ZAMORA FIRM
6 Concourse Parkway, 22nd Floor
Atlanta, GA 30328
Telephone: 404/451-7781
Facsimile: 404/506-9223
mark@markzamora.com

Patrick T. Fennell
CRANDALL & KATT
366 Elm Avenue, S.W.
Roanoke, VA 24016
Telephone: 540/342-2000
Facsimile: 540/400-0616
pfennell@crandalllaw.com

Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, J. GERARD STRANCH, hereby certify that on May 9, 2016, I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

/s/ Gerard Stranch, IV
J. GERARD STRANCH, IV